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ABSTRACT

The study described in this report analyzed the status of grievance procedures in the Illinois community colleges that engage in collective bargaining. Following an introductory chapter offering a rationale for the study, chapter 2 provides an analysis of existing grievance procedures in the colleges based on a study of the collective bargaining contracts of 20 schools. The analysis covers definitions of "grievances," the extent of the issues that may legitimately be "grieved," eligible grievants, steps and time limits in the procedures, expedited grievances, no-reprisal clauses, sources of arbitrators, limitations on arbitrators' authority, and conditions of arbitration. In chapter 3, findings are presented from a survey, of 19 college administrators, which focused on the colleges' bargaining experience, first contracts, and grievance arbitration history; the number and types of issues grieved between 1979 and 1982; the impact of the definitions of grievance and the grievance procedures on college governance and institutional relationships; time expended in the grievance process; arbitration costs; respondents' perceptions of the arbitration process, of arbitrators' knowledge of community college organization and governance, and of the beneficiaries of grievance arbitration; attorney involvement; arbitration outcomes; and the involvement of the courts. The report concludes with a discussion of future directions and the implications of study findings. (LL)

ILLINOIS COMMUNITY COLLEGE

GRIEVANCE PROCEDURE ANALYZER

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As a part of its public service, Illinois State University seeks to promote a systematic and thorough discussion of all public policy matters and supports various types of research which contribute to that end.

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INTRODUCTION AND RATIONALE

A research team from Illinois State University issued a monograph entitled A Collective Bargaining Contract Analyzer for Community Colleges in 1982. The monograph was published by the Illinois Community College Trustees Association; the Office of the President, Illinois State University; and the Center for the Study of Educational Finance, Illinois State University.[1] The purpose of the monograph was to analyze the substantive terms of Illinois community college contracts. The authors were encouraged to write a second monograph analyzing community college grievance procedures.

The collective bargaining contract has two fundamental purposes. First, it establishes the substantive terms of employment. Second, it establishes the procedural means for resolving disputes arising from the interpretation or application of the contractual terms. Obviously, both are extremely important, and one would be of little value without the other.

Virtually all labor agreements contain a grievance procedure. As early as 1964 the United States Department of Labor found that 99 percent of private sector contracts studied contained grievance procedures.[2] A 1979 study by the Bureau of National Affairs reconfirmed that 99 percent figure.[3] Post-secondary institutions have a similar experience. Many state bargaining laws make grievance procedures a mandatory item for negotiation in public community colleges.[4] Without legislation, 95 percent of Illinois community college contracts with

faculty unions contain grievance procedures.[5] Mandated grievance procedures are often included in the various bargaining bills introduced in the Illinois General Assembly. Most informed observers predict that future Illinois legislation will include grievance procedures as a mandatory bargaining item.

Any contract can become the focus of a dispute. In commercial law these disputes are settled by litigation. In labor law, contract disputes are generally resolved via the grievance process. A grievance is a specific, formal dissatisfaction with the application and interpretation of a labor contract. This is the "narrow" definition of grievance. Some contracts have broadened the definition to include issues beyond the interpretation of the contract itself.

The grievance procedure, because it is the labor law alternative to litigation, is a crucial part of labor relations. Ideally, the grievance process is intended to provide a quick, non-legal, and inexpensive resolution of contractual disputes. These objectives are not always achieved.

Benefits of Grievance Procedures

Systematic grievance procedures are one of the most significant contributions of the American labor movement. The grievance process benefits the following four groups: management, unions, faculty members, and the general public.

College management benefits from grievance procedures because the process provides a systematic channel for resolving differences. The process serves as a safety valve for the employee and allows the administration to identify and isolate

problems. When the alternatives of strikes, physical intimidation, or a multitude of other disruptive tactics are considered, the benefits are obvious to the administrator concerned with organizational stability and predictability. In addition, the procedure encourages employees to resolve problems at the lowest possible level.

Unions must have some means of enforcing the contract, or they have no power. The grievance procedure provides a vehicle to enforce the contract. In the grievance arbitration process the union can insist upon consistency and uniformity of management's application and interpretation of the contract, thus providing security to union employees and identifying problem areas for future negotiations.

The grievance procedure is primarily designed to benefit faculty members by providing a quick, low-cost, non-legalistic system to resolve disputes and to obtain redress of legitimate grievances. Employees are given an opportunity to set forth their views and concerns without fear of retribution and with the assistance of an advocate.

The public also benefits from the grievance process. A contractual grievance agreement requires the peaceful settlement of disputes. "Wildcat strikes" are eliminated during the life of the contract. This minimizes the disruption of important educational services.

Value of This Study

While the benefits of grievance procedures are numerous, critics have identified several key problems. These procedures have become too costly, too legalistic, too time-consuming, and often fail to meet the needs of individual employees.[6] Brodie and Williams found that the average grievance in educational institutions required 9-12 months for final resolution.[7] Zalesky described the situation succinctly:

> The traditional labor arbitration procedure has grown in complexity until today it is taking on the appearance of a courtroom procedure. The presence of lawyers, use of transcripts, swearing in of witnesses, pre- and post-hearing briefs, and long delays throughout--in setting hearing dates, extending deadlines for the filing of briefs and waiting for the decision--are all too common. The arbitration process is so large and cumbersome it is beginning to discourage . . . justice . . . ."[8]

Another problem is the shortage of trained arbitrators with an understanding of public education and the community college.[9] These problems have generated new interest in the grievance process.

Both college management and faculty unions need guidelines to assist them in the negotiation and renegotiation of grievance procedures. Unfortunately, ". . . little has been written about the principles that might guide the formulation of effective grievance procedures."[10] This monograph is designed to help fill this vacuum and provide information which will assist college negotiators to formulate more effective grievance procedures.

Purpose

The purpose of this monograph was to analyze the status of grievance procedures in Illinois community colleges which engage in collective bargaining. The major questions addressed in this study were:

A. What are the provisions of grievance procedures currently in existence in these colleges?

B. How many grievances have been filed in each institution over a three-year period? How many of these grievances were resolved by arbitration?*

C. What is the nature of the issues grieved and arbitrated?

D. What problems and issues have been identified by Illinois community college administrators with the grievance arbitration process?

E. What trends appear to be emerging in Illinois community college grievance administration, based on the analysis of a state-wide survey?

Method

The data for this study were obtained in two ways:

A. The collective bargaining contracts from the twenty Illinois community colleges that engage in formal negotiations were analyzed by utilizing the Grievance Procedure Analyzer (GPA).

B. A questionnaire was used to obtain additional information from community college presidents or their designees.

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*The number of grievances may or may not indicate something adverse. There are a variety of reasons why, in a particular institution, a large number of grievances should be filed or why they do not occur. The number of grievances per se does not indicate any conclusion about a particular institution.

II

ANALYSIS OF EXISTING GRIEVANCE PROCEDURES

Grievance Procedure Analyzer (GPA)

The authors developed and utilized the Grievance Procedure Analyzer (GPA) (see Figure 1) to analyze and compare faculty grievance procedures of the Illinois public community colleges. Eleven variables were selected for inclusion in the GPA. These variables are identified and discussed below:

1. Definition

   The definition is perhaps the most critical component of the grievance procedure. The exact definition of the term "grievance" determines the subject matter (scope) that can be grieved and thus the potential number of grievances that may be generated by faculty.

2. Scope

   The scope of a grievance refers to the extent of issues that may be legitimately grieved by an employee or union. The scope varies from contract to contract.

   A. A broad definition allows an employee to grieve almost any concern that an employee may have about his/her work.

   B. A narrow definition limits the process to items contained in the written contract.

   C. Many contracts adopt a compromise definition. Employees may grieve contractual disputes and disputes of certain other specified policies and/or procedures.

3. Eligible Grievant

   Eligible grievants varied in the Illinois community college contracts analyzed. Four possible categories of eligible grievants in these contracts were: (a) employee; (b) group of employees; (c) union/association; and (d) employer.

FIGURE 1

GRIEVANCE PROCEDURE ANALYZER (GPA)

COLLEGE: _____

(1)	(2)			(3)				(4)			(5)				(6)		
Definition	Scope			Eligible Grievant				Steps			Time Limits				Final Step		
	Broad	Narrow	Compromise	Employee	Group Of Employees	Union	Employer	Informal Step		Total Number Of Steps	Time Bar After Occurrence		Between Steps		Binding Arbitration	Advisory Arbitration	Board
	A	B	C	A	B	C	D	YES	NO		YES	NO	YES	NO	A	B	C
											NUMBER OF DAYS						

Miscellaneous Notes:

(Continued on next page.)

FIGURE 1 (cont'd)

GRIEVANCE PROCEDURE ANALYZER (GPA)

DURATION OF CONTRACT: _____

UNION AFFILIATION: _____

(7)		(8)		(9)			(10)		(11)							
Expedited Grievance		No-Reprisal Clause		Source of Arbitrator			Limitations On Arbitrators Authority		Conditions Of Arbitration -A-		-B-			-C-		
									Access		Type Of Arbitrator			Expense Of Arbitration		
				AAA	FMCS	OTHER			Grievant Control	Union Control	Ad Hoc	Tri-partite	Permanent	Union Percentage	Management Percentage	
YES	NO	YES	NO	A	B	C	YES	NO								

4. Steps

A. Informal Step

Many contracts encourage an informal conference between the employee and his/her supervisor before a formal grievance is filed. The purpose of this provision is to encourage both parties to resolve the problem before their positions become solidified. The rationale for including this provision in a written contract is questionable since it is an implied characteristic of the grievance process.

B. Number of Steps

The grievance process consists of a number of appeal levels or steps which progress through the chain of command. The number of steps varies from contract to contract. The typical grievance procedure has three, four, or five steps. When binding arbitration of grievances is included in the contract, it is the last step of the grievance procedure.

5. Time Limits

A. Time Bar

Generally grievance procedures contain specified time limits. Both labor and management recognize the need for time limits to ensure that evidence remains available on the grievable issue and to ensure that grievances are handled promptly. This column of the GPA records whether or not the various contracts have a time bar which precludes the filing of a grievance after a stated time period, e.g., "grievances must be filed within ten (10) working days after the event giving rise to the alleged grievance occurred."

B. Between Steps

Most contracts also specify time limits between the various steps. These time limits indicate the amount of time that management has to respond and how much time the grievant has to appeal to the next step.

6. Final Step

The final step of the procedure is the most controversial aspect of the grievance process. Choices available for this terminal step include advisory arbitration, binding arbitration and resolution by the board of trustees. In the process of advisory arbitration, the board of trustees is also the final step, but they have the benefit of the arbitrator's opinion which they may accept or reject.

7. Expedited Grievance

Expedited grievance procedures have been adopted by some industries for the following three reasons: (1) reducing cost, (2) minimizing time, and (3) eliminating overly legalistic requirements. With these procedures, various shortcuts are taken in the grievance process; some examples include, eliminating several steps, waiving the necessity for typed transcripts, and eliminating the written ruling.

8. No Reprisal Clause

Some contracts attempt to ensure protection of employees by firmly stating that no reprisals will be made against employees who initiate grievances.

9. Source of Arbitrator

The sources of arbitrators include the American Arbitration Association (AAA), the Federal Mediation and Conciliation Service (FMCS), state agencies, and private citizens. Some organizations and unions have become dissatisfied with the use of a new arbitrator with each grievance and have agreed to a "permanent arbitrator" who hears every grievance.

10. Limitations on Arbitrators' Authority

Arbitrators only have authority that the parties delegate to them in the agreement. Arbitration provisions should specifically state the scope of the arbitrator's authority as

well as the rights of the employer, the union and the individual employee. Some agreements define the scope of arbitration narrowly; for example, "only questions of discipline may be arbitrated." Other agreements provide a very wide scope of arbitration; e.g., "Any dispute between the parties, whether or not founded in the agreement may be submitted to arbitration."[11]

11. Conditions of Arbitration

Contracts often contain an article that specifies the rules, procedures and obligations of the respective parties such as access to arbitration, type of arbitration used and the payment of expenses. Incomplete or ambiguous provisions can cause each arbitration to become the source of misunderstanding between the parties.

A. Access to Arbitration

The union generally controls access to arbitration. The union has an obligation to pursue all legitimate grievances of faculty members whether or not they belong to the union.

B. Type of Arbitrator

Some institutions prefer a single arbitrator chosen on an ad hoc basis. Others prefer the judgment of a tripartite panel of arbitrators. Another alternative is to select a permanent arbitrator.

C. Expense of Arbitration

The expense of arbitration is generally split 50-50 between the two parties. Routine expenses include arbitrator's and court reporter's fees and per diem costs. Both parties generally pay their own lawyer fees and other expenses associated with advocacy.

Analysis of Grievance Procedure Variables

The authors analyzed 20 contracts to ascertain the status of grievance procedures in Illinois community colleges.* Table 1 provides information about the contracts analyzed.

*The tables in this monograph include both numbers and percentages. The authors recognize and caution the reader that the population is very small and that generally speaking the number of colleges in a specific categorization may be more informative than the percentages.

TABLE 1

CONTRACTS ANALYZED

College	Bargaining Agent	Duration of Contract
Belleville	Am. Association of University Professors*	1980-83
Chicago	Federation of Teachers (AFT)	1982-84
Harper	Faculty Senate (AFT)	1981-82
Highland	Faculty Senate (AFT)	1981-83
Illinois Central	Faculty Forum	1981-83
Illinois Valley	Federation of Teachers (AFT)	1980-82
Joliet	Federation of Teachers (AFT)	1981-82
Lake County	Federation of Teachers (AFT)	1980-82
Lewis and Clark	Faculty Association (NEA/IEA)	1979-82
Logan	Faculty Association (NEA/IEA)	1981-84
McHenry	Faculty Association (NEA/IEA)	1980-82
Moraine Valley	Faculty Association (AFT)	1980-83
Morton	Federation of Teachers (AFT)	1981-83
Prairie State	Federation of Teachers (AFT)	1979-82
Sandburg	Faculty Association (NEA/IEA)	1980-82
Sauk Valley	Faculty Association (NEA/IEA)	1980-82
Spoon River**	Faculty Association (NEA/IEA)	1981-83
Thornton	Faculty Association (AFT)	1980-82
Triton	Faculty Association (AFT)	1981-83
Waubonsee	Federation of Teachers (AFT)	1980-82

*Belleville faculty pay dues to two unions although it appears that the AAUP negotiated the current contract.

**No Grievance Procedure is included in this contract. This is unique. Over 99% of all contracts have a grievance procedure.

1. Grievance Definition and 2. Scope (Table 2)

The exact definition of the term "grievance" varied from college to college. The definition is important because it can affect the potential number of grievances that may be filed by faculty members. This study indicates that Illinois community colleges include three types of grievance definitions: (A) Broad, (B) Narrow, and (C) Compromise.

(A) Broad definitions allow employees to grieve many issues beyond the labor contract including college policies, procedures, practices, state laws and regulations. Such a broad definition has the potential to greatly magnify the number of grievances because almost anything can be grieved. Maintenance of standards or past practice clauses in contracts also greatly expand the subject matter and thus the number of potential grievances.

(B) A narrow definition limits the grievance process to specific items enumerated within the contract. This minimizes the potential number of grievances.

(C) Other contracts adopt a compromise definition. Such a provision allows more grievances than the narrow definition, but is not as subject to abuse as the broad definition.

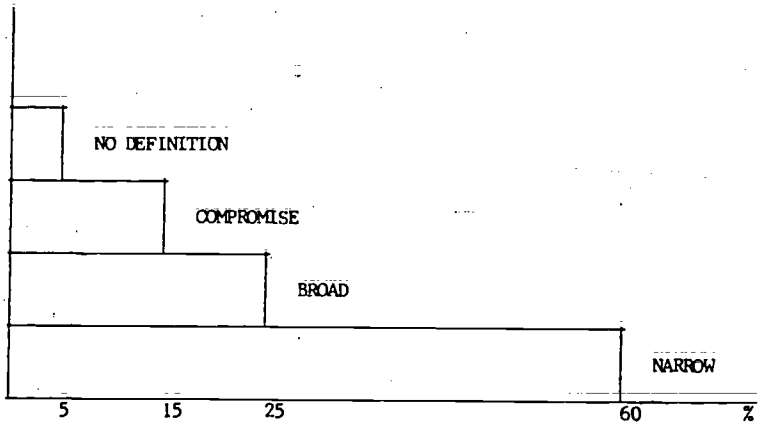
"Although the scope of a grievance can differ from the scope of arbitration, frequently what is grievable is also arbitrable."[12] Disputes over the arbitrability of a grievance often are determined by the contract's definition of grievance. If a college wishes to minimize the number and types of issues that are subject to arbitration, it behooves them to seek a narrow definition (scope) of grievance.

Analysis of Illinois contracts indicates that 25% of the colleges have negotiated grievance clauses that broadly interpret grievances (see Table 2). The Belleville contract does not define grievances at all; this is the broadest interpretation possible. Sixty percent of the contracts have a narrow interpretation of grievance. Fifteen percent of the colleges have adopted compromise definitions. The Spoon River contract is unique in that it provides no grievance definition or procedure.

TABLE 2

GRIEVANCE DEFINITION

N = 20



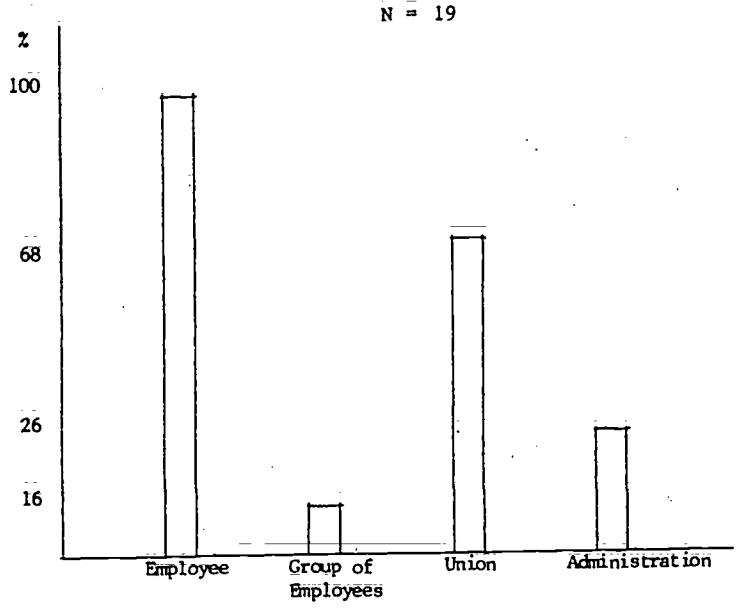
3. Eligible Grievant (Table 3)

All contracts with a gr[illegible]nce procedure allow the faculty employee to submit a grievance. Three colleges (16%) had contracts that also allow a group of employees to collectively grieve. Thirteen (68%) of the contracts permit Union/Association grievances. However, limitations are placed on the type of grievances that a union may originate on its own initiative. The Logan contract, for example, specifies that Association grievances are limited to (1) alleged violations of the agreement directly related to association rights, and (2) grievances that relate to classes of full-time faculty members. Although extremely rare in contracts negotiated outside of education, five college contracts (26%) allow the administration to bring a grievance against the union.

TABLE 3

ELIGIBLE GRIEVANT

N = 19



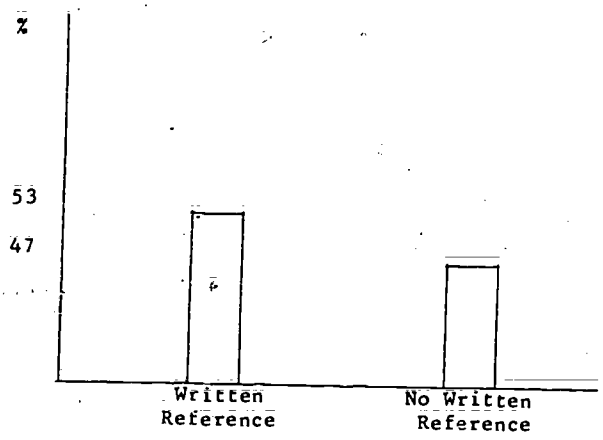
4.A Encouragement of Informal Resolution (Table 4)

The grievance literature encourages both management and union members to settle grievances informally before initiating the formal grievance process. This is generally an implied step even when not formally stated in the contract. Table 3 indicates that 10 colleges (53%) have contracts with articles that encourage informal resolution.

TABLE 4

INFORMAL RESOLUTION

N = 19



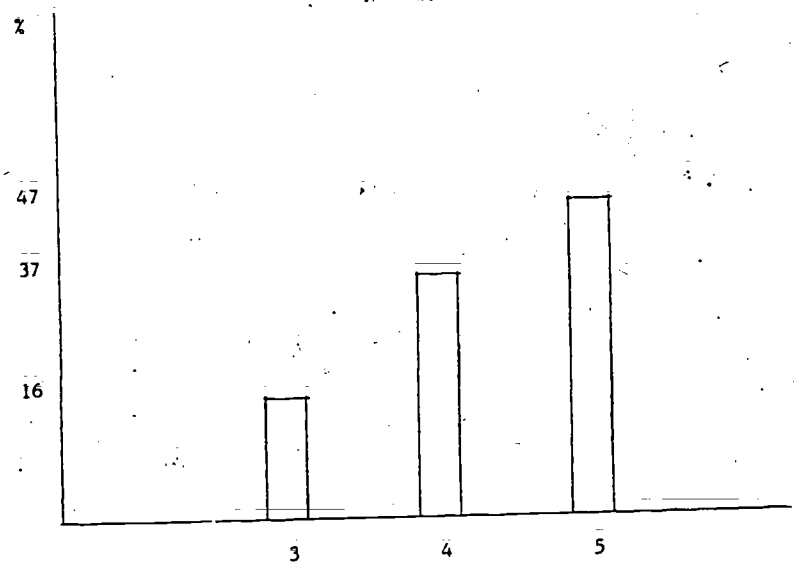
4.B Number of Steps (Table 5)

Community colleges have basically the same number of procedural steps found in private sector contracts. The number of steps is generally considered a function of faculty size and whether or not the contract has an arbitration clause. Neither variable appears to be especially predictive for Illinois community colleges. The range of steps in these contracts was from 3 to 5 with the mode being 5 steps.

TABLE 5

NUMBER OF STEPS

N = 19



5.A Time Bar (Table 6 and Table 7)

Most contracts have a time bar after which a grievance cannot be initiated. This article from an Illinois community college contract is illustrative:

> A faculty member may present a grievance concerning himself, or a grievance may be presented in his behalf, not later than ten (10) school days following his knowledge of the act, event or the commencement of the condition which is the basis of the complaint.[13]

This limit has two purposes; (1) encourage prompt resolution, and (2) help ensure that evidence and memory is intact for a reasonable hearing. The Illinois community colleges follow this pattern with two (10%) exceptions. At these two colleges, there is no time limitation for the initiation of grievances. The range of time bars is from 5 to 90 days (see Table 7).

If the contract does not specify time limits, arbitrators have been willing to hear grievances on their merits regardless of their age. This fact alone should convince college administrators of the need for a precise "time bar."

TABLE 6

TIME BAR

N = 19

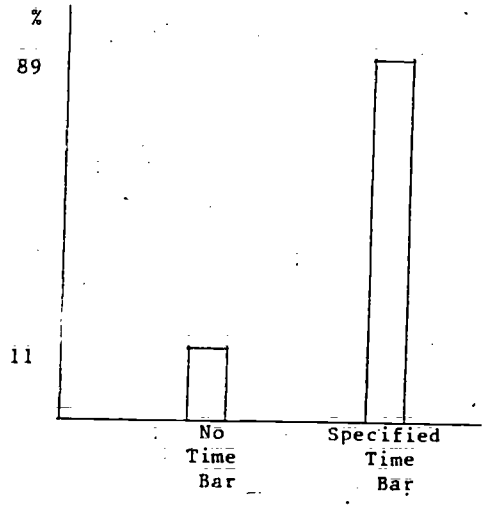


TABLE 7

TIME BAR: NUMBER OF DAYS AFTER CONTRACT VIOLATION

N = 19

No Time Bar Specified	5 Days	10 Days	14 Days	15 Days	30 Days	90 Days
Belleville	McHenry	Chicago	Lewis and Clark	Illinois Central	Illinois Valley	Sauk Valley
Waubonsee		Harper		Logan	Prairie State	
		Highland		Morton		
		Joliet		Sandburg		
		Lake				
		Moraine				
		Thornton				
		Triton				
Total 2 (11%)	1 (5%)	8 (42%)	1 (5%)	4 (21%)	2 (11%)	1 (5%)

5.B Grievance Process Time Limits (Figures 2-4)

The grievance process is designed to allow those individuals closest to the alleged dispute an opportunity to reach a settlement. When this attempt at settlement fails, then others with more authority are involved. Negotiated time limits keep the process moving forward from step to step without undue delay by specifying the time which management has to respond and the time the grievant has to appeal to the next step. A great diversity of procedures and time limits exist in the nineteen Illinois college contracts analyzed. The definition of "day" also varies greatly. Some colleges defined days as calendar days, others used school days, and still others used working days. One college contract stated that "days" shall mean "days when the College Personnel Department is open." Another contract defined school days as "days the responsible administrator is on campus." No single set of procedures and time limits could be expected to meet the needs of all colleges. Three examples which are representative of grievance procedures and time limits found in Illinois community college contracts are provided in Figures 2-4.

Figure 2

GRIEVANCE PROCESS

(Sauk Valley)

	Union Representative	Time Limits on Union	Management Representative	Time Limits on Management
Step 1	The grievant or the association	90 calendar days	Supervisor	28 calendar days
Step 2	Association representative	14 calendar days	Dean or designee	28 calendar days
Step 3	Association representative	14 calendar days	Board of Trustees Grievance Hearing Committee*	28 calendar days
Step 4 (Arbitration)	Association representative	14 calendar days		

*Two board members, President and one dean not previously involved in Step 2.

Figure 3

GRIEVANCE PROCESS

(Lake County)

	Union Representative	Time Limits on Union	Management Representative	Time Limits on Management
Step 1	Grievant or Union representative	10 work days	Supervisor	14 work days*
Step 2	Grievance or Union Rep.	8 work days	President or designee	16 work days
Step 3 (Arbitration)	Union Rep.	15 work days		

*The contract states that "days" shall mean days on which the College Personnel Department is open.

Figure 4

GRIEVANCE PROCESS*

(Triton)

	Union Representative	Time Limits on Union	Management Representative	Time Limits on Management
Step 1	The grievant and association	10 school days	Chairperson or appropriate college official	3 school days*
Step 2	The grievant or association	5 school days	Vice President of Personnel	5 school days
Step 3	The grievant or association	5 school days	Faculty assoc. officers College President Vice Presidents	7 school days
Step 4	Not specified in contract	5 school days	Board of Trustees (may utilize Joint Board-Administration-Faculty Committee)	Board Meeting following appointment of Joint Committee
Step 5 (Advisory Arbitration)		5 school days		

*School days defined as days the "responsible administrator is on campus."

6. Grievance Resolution--Final Step (Table 8)

Fourteen colleges (74%) have negotiated binding arbitration of grievances leavin_ resolution of grievances to neutral third parties. Two colleges (11%) have advisory arbitration of grievances which allows the board to ignore the arbitration recommendation if it disagrees with the arbitrator. Three contracts specify that the board of trustees makes the final decision without benefit of third party advice.

TABLE 8

THE FINAL STEP IN THE GRIEVANCE PROCESS

N = 19

Board of Trustees	Advisory Arbitration	Binding Arbitration
Logan	Belleville	Chicago
Morton	Triton	Harper
Sandburg		Highland
		Illinois Central
		Illinois Valley
		Joliet
		Lake County
		Lewis and Clark
		McHenry
		Moraine Valley
		Prairie State
		Sauk Valley
		Thornton
		Waubonsee
Percent 15	11	74

Binding arbitration is primarily a union tool which forces management to comply with the collective bargaining contract. Consequently, grievance binding arbitration has been persued vigorously by faculty unions.[14]

7. Expedited Grievance

To minimize cost, time delays, and eliminate some legalistic processes, some industries have established expedited grievance procedures.[15] These objectives are often applauded by both management and labor. Expedited grievance procedures include one one or more of the following features: (1) elimination of several steps, (2) elimination of written transcripts and briefs, (3) elimination of written rulings with the arbitrator issuing an oral opinion, and (4) use of non-lawyers as arbitrators. This eliminates the cost of a court reporter, printing costs, and reduces lawyer and arbitrator fees. In addition, expedited procedures minimize the time expended by faculty and administrators as well as simplifying the grievance process.

No community college in Illinois attempts to expecite grievances in a comprehensive manner. However, a few contracts specified that the parties could forego the cost of a typed transcript if the parties so desired. This decision was left to the arbitrator in other contracts. But in sum, expedited grievance procedures are foreign to Illinois community college faculty union contracts.

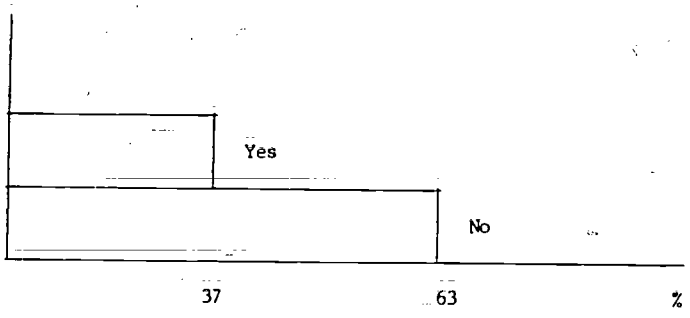
8. No Reprisal Clause (Table 9)

In many contracts an article is included which protects employees from any possible reprisal for participating as a grievant or witness in the grievance process. Faculty may fear dismissal, punitive damages and other arbitrary and capricious actions by administrators due to their participation in a grievance. This type of clause is designed to protect both the grievant and any witnesses. At least one contract also ensured administrators and supervisors that the union would not take reprisals against them.

TABLE 9

NO REPRISAL CLAUSE

N = 19



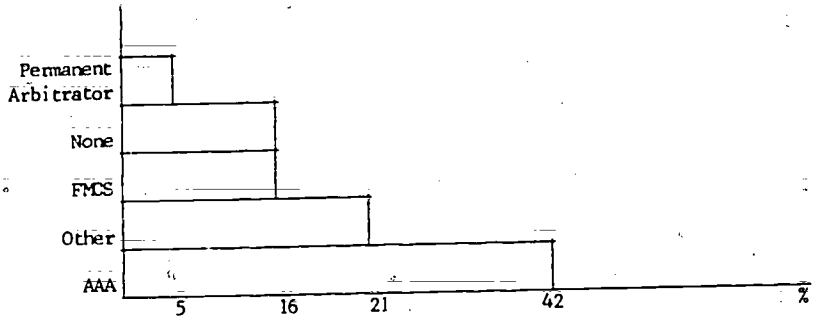
9. Source of Arbitrator (Table 10)

Eight colleges (42%) utilize the American Arbitration Association (AAA) source for arbitrators. Three contracts indicate a preference for the Federal Mediation and Conciliation Service (FMCS). Two colleges selected FMCS as a second choice when they cannot obtain mutual agreement on the designation of an arbitrator. Belleville uses advisory arbitration by a panel of three people. One panel member is selected by each of the two parties and the third from the Illinois Department of Labor. Triton has a permissive article which allows the use of a joint committee consisting of three members, one each from the board, administration and faculty. Chicago utilizes a permanent arbitrator.

TABLE 10

SOURCE OF ARBITRATOR (FIRST CHOICE)

N = 19



36

10. Limitations on Arbitrator's Authority

Almost all contracts (89%) placed some limitations on the arbitrator's authority. This is done to clarify the precise authority of the arbitrator and to prevent non-arbitrable items from being arbitrated. Arbitrators are ethically bound and legally encouraged to live within the authority provided them in the agreement. If no parameters are stated, both parties must live with the arbitrator's interpretation of his/her own authority. One example of ensuring a limitation on the arbitrator's authority follows:

> The arbitrator shall limit his decision strictly to the application and interpretation of the provisions of this Agreement and he shall be without power or authority to make any decision:
>
> 1) Contrary to, or inconsistent with, or modifying or varying in any way, the terms of this Agreement: or
>
> 2) Limiting or interfering in any way with the powers, duties, and responsibilities of the Board under applicable law.[16]

11. Conditions of Arbitration

Arbitration is a quasi-legal system. This system works best when both parties know the rules and procedures in advance. Conditions often enumerated in contracts include: (1) rules to be used, (2) time limits until the hearing is held, (3) use of a court reporter, (4) post-hearing briefs, (5) time limits on arbitrator decision-making, and (6) payment of arbitration fees and expenses.[17] In addition, there is often a requirement in the contract that both parties accept the decision of the arbitrator fully and immediately. Some contracts also specify that neither party will appeal the award to the courts unless one of the parties believes that the arbitrator acted illegally.

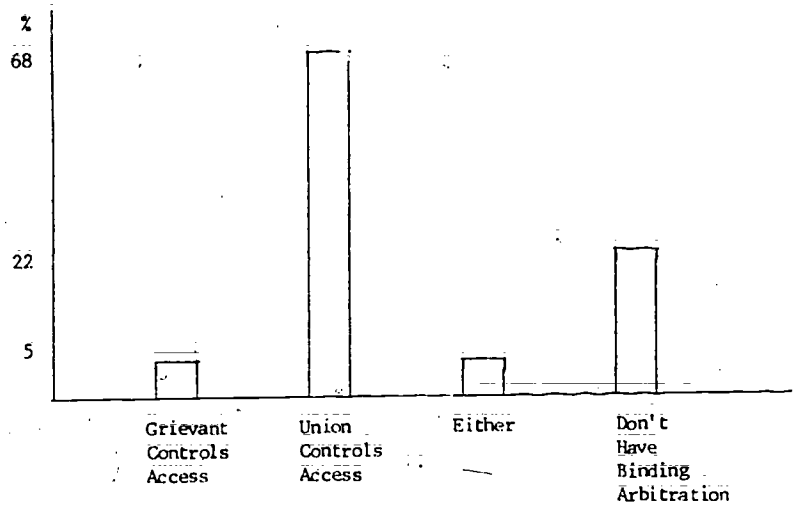
11.A Access to Arbitration (Table 11)

Traditionally labor unions control access to the arbitration process. The use of binding arbitration is the chief method unions have to enforce the contract. In 1967 the Supreme Court, in Vaca v. Sipes, recognized that unions in the private sector control access to arbitration and ruled that no individual employee has an absolute right to arbitration.[18] The private sector principle of union control of access is followed in most Illinois community college contracts. Two exceptions to this pattern were found. One contract states that the decision to seek arbitration is made solely by the grievant. One other contract implies that either the grievant or the union controls access to arbitration.

TABLE 11

ACCESS TO ARBITRATION

N = 19



11.E Type of Arbitrator (Table 12)

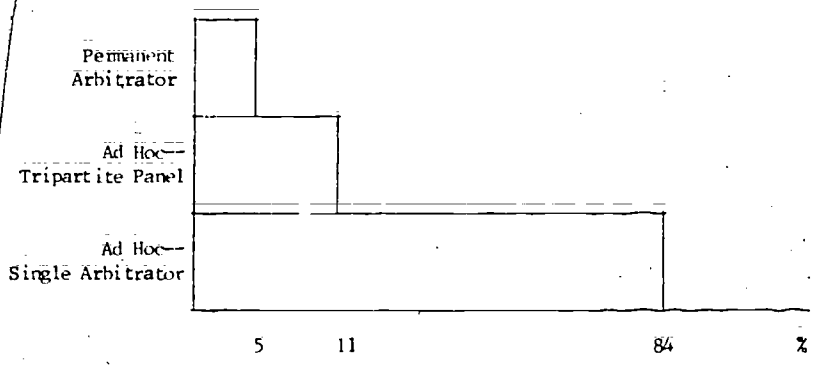
Sixteen of the colleges (84%) use arbitration in their grievance processes. Of these, thirteen (81%) select arbitrators on an ad hoc basis. One college has a permanent arbitrator. Two colleges utilize tripartite panels. With a tripartite panel, management selects an arbitrator as does labor; then these two arbitrators select the third party. The arbitration decision is rendered by the three arbitrators.

Those who favor the selection of a permanent arbitrator believe that it is preferable to vest authority in ". . . someone familiar with the campus and the parties, rather than an externally selected person who may have no understanding of the academic environment."[19]

TABLE 12

TYPE OF ARBITRATOR

N = 19



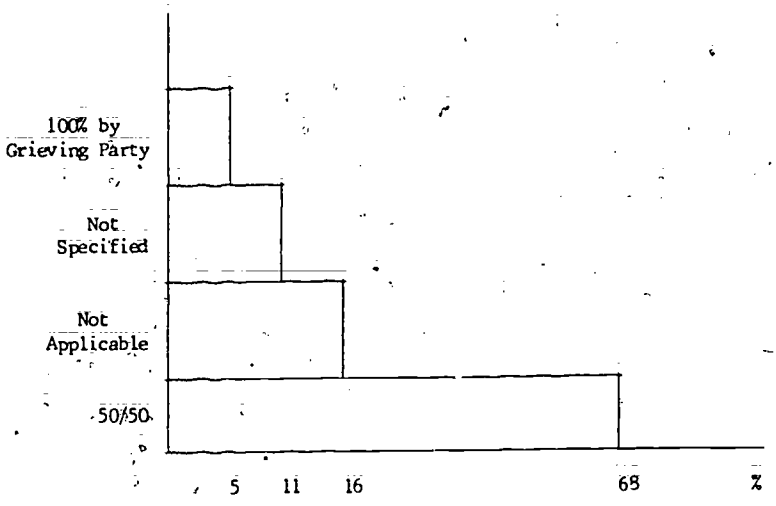
11.C Expense of Arbitration (Table 13)

Generally both parties divide the expense of arbitration equally. Thirteen contracts (68%) followed this practice. Two contracts did not specify how arbitration expenses would be funded. This omission could result in misunderstandings. One contract requires that the grieving party pay 100% of the arbitration expenses. This practice would appear to have a chilling effect on the generation of grievances and defeat the purpose for having a grievance procedure.

TABLE 13

EXPENSE OF ARBITRATION

N = 19



CHAPTER III

RESULTS OF GRIEVANCE ARBITRATION SURVEY

Purpose

The purpose of this study was to analyze the state of the art of grievance procedures in Illinois community colleges which employ collective bargaining. Current contracts from nineteen Illinois community colleges were analyzed. Analysis of these contracts raised many questions about grievance administration. Therefore, a follow-up survey was designed and sent to the nineteen colleges. Specific data based upon college experience with grievance and arbitration cases were gathered by this survey.

The major questions addressed in this part of the study were:

A. How many grievances have been filed in each institution over a three-year period? How many of these grievances were resolved by arbitration?

B. What is the nature of the issues grieved and arbitrated?

C. What problems and issues have been identified by Illinois community college administrators with the grievance arbitration process?

D. What trends appear to be emerging in Illinois community college grievance administration?

Method

A three-page survey instrument, designed by the authors, was mailed to the presidents of the nineteen community colleges with a negotiated grievance procedure in their collective bargaining agreements. The instrument was field-tested with two community college presidents before being altered and distributed to the sample population.

Twelve (63%) of the community colleges completed the survey and returned it. The instruments were completed by administrators with a variety of responsibilities. Six presidents personally responded to the survey.

FINDINGS

BARGAINING EXPERIENCE (Table 14)

The community colleges responding to the survey had a rather long history of bargaining experience. The range in bargaining experience was from 5 to over 25 years, with a mean of 14 years. The twelve colleges reported that they had renegotiated contracts a total of 95 times.

TABLE 14

BARGAINING EXPERIENCE

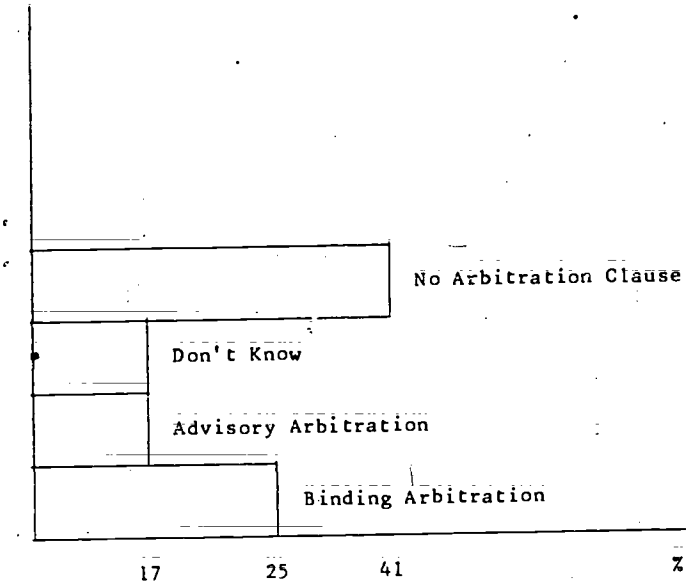
Number of Years With Formal Contract	Number of Colleges	
	No.	%
5	1	8
10	2	17
11	2	17
13	2	17
14	1	8
15	2	17
16	1	8
over 25 years	1	8

TYPE OF ARBITRATION: FIRST CONTRACT (Table 15)

The contracts analyzed varied in the type of terminal step contained in their grievance procedure. Three colleges (25%) agreed to binding arbitration in their initial contract. Two colleges (17%) accepted advisory arbitration in their initial contract. From a management perspective, and in retrospect, it is generally considered better not to negotiate binding arbitration so early in a college's bargaining history. Currently 74% of the Illinois community college contracts have binding arbitration, while only 34% of the public school districts in Illinois have this feature in their contracts.[20]

TABLE 15

TYPE OF ARBITRATION - FIRST CONTRACT



GRIEVANCE ARBITRATION HISTORY (Table 16)

Table 16 contains information about the numbers of grievances and arbitrations experienced by the colleges during the years 1979-82. A total of 120 separate grievances was reported by the twelve colleges during this 3-year period. One college accounted for 80 of these grievances. Very few of the grievances advanced to arbitration. Of those which did move to arbitration, 14 cases were referred to binding arbitration and 3 cases to advisory arbitration.

The reported number of grievances declined substantially from 1979 to 1982. The grievances filed in 1982 were approximately 40% of the 1979 total.

TABLE 16

GRIEVANCE - ARBITRATION HISTORY

College No.	Number of Grievances			Grievances Advancing to Binding Arb.		Grievances Advancing to Advisory Arb.		Advisory Arbitrators Recommendation Accepted by Board
	79-80	80-81	81-82	No.	%	No.	%	%
1	0	4	0	N/A*	N/A	No Response		67
2	40	30	10	14	17.5	N/A	N/A	N/A
3	2	2	1	0	0	N/A	N/A	N/A
4	DK**	DK	DK	N/A	N/A	3	DK	DK
5	4	3	4	0	0	N/A	N/A	N/A
6	0	1	1	N/A	N/A	N/A	N/A	N/A
7	0	1	0	0	0	N/A	N/A	N/A
8	2	3	0	0	0	N/A	N/A	N/A
9	2	1	1	DK	DK	N/A	N/A	N/A
10	1	1	2	0	0	N/A	N/A	N/A
11	DK	DK	DK	DK	DK	N/A	N/A	N/A
12	2	2	3	0	0	N/A	N/A	N/A
TOTALS	53	46	21	14		3		

*N/A = Not applicable
**DK = Don't Know

ISSUES GRIEVED: 1979-1982 (Table 17)

Table 17 highlights the kinds of issues which were grieved by Illinois community college faculty and the disposition of these grievances. A perusal of the table indicates that the issues of faculty promotion and workload/overload have been grieved 8 times. Teaching assignments, faculty appointment and extra-duty responsibilities were each grieved 5 times. All of these issues are "bread and butter" type concerns, typically of importance to faculty. Each concern directly impacts salary or working conditions.

Peripheral issues like leaves, professional growth, and transfer were seldom grieved. While an individual faculty member may be directly affected by any one of these issues, they usually don't have the general impact of the other grievable issues.

The table illustrates again that a very small number (12%) of grievances have been referred to arbitration. Most grievances (40%) are settled by compromise while 32% are voluntarily withdrawn by the grievant.

TABLE 17

ISSUES GRIEVED: 1979-1982

Issues	A Number of Formal Grievances	B Number Settled by Compromise	C Number Voluntarily Withdrawn	D* Number Referred to Arbitration
Teaching assignment	5	3		1
Faculty promotion	8	3	1	2
Workload/Overload	8	3	3	
Faculty appointment	5	3		1
Extra-duty responsibilities	5	2	1	2
Letter of reprimand	4	1	2	1
Disciplinary action	4		2	
Maintenance of Standards/ Past Practice	4	3		
Miscellaneous	4	1	3	
Personal leave	3	1		
Faculty evaluation	2	2		
Sex discrimination	2	1	1	
Dismissal	2		1	
Reduction in force	1		1	
Budget cuts	1		1	
Race discrimination	1		1	
Prof. Growth Record	1	1		
Policy issue	1		1	
Sabbatical leave				
Sick leave				
Union leave				
Other leave				
Involuntary transfer				
Age discrimination				
TOTAL	69	27	22	8
%	100%	40%	32%	12%

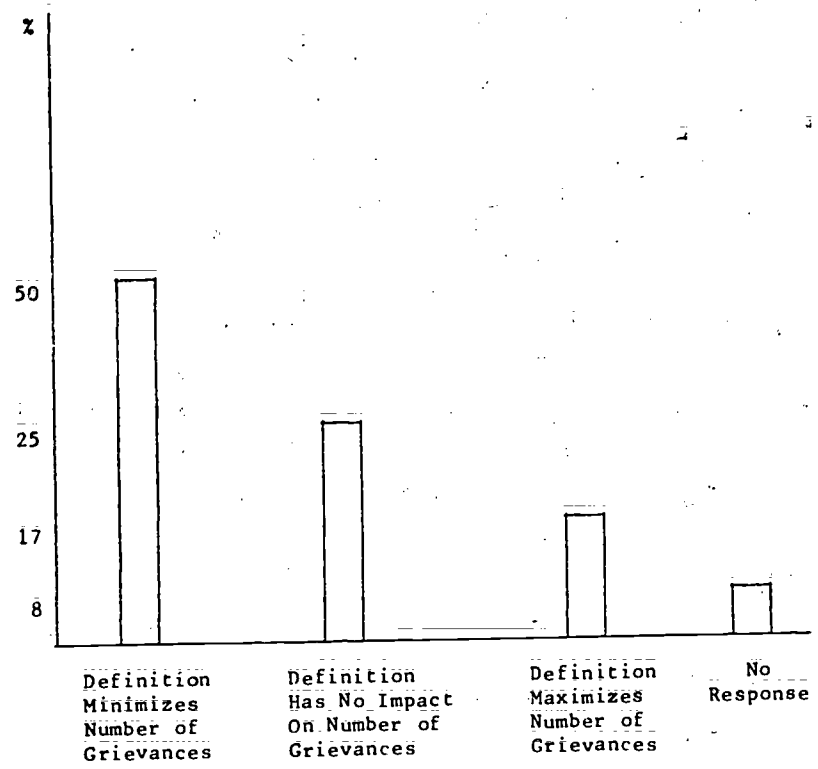
*The total in Column A is significantly different from the total reported in Table 16. Columns B, C, and D, do not total 100% because some grievances are still in the process of being resolved.

IMPACT OF GRIEVANCE DEFINITION (Table 18)

The respondents were asked if the definition of grievance contained in their faculty contract minimized or maximized the number of grievances generated by faculty. As reported earlier, most of the contracts (60%) included a narrow definition of grievances. This may help explain why only a small percent (17%) of the respondents indicated that their definition maximized the number of grievances. Nine colleges (75%) indicated that their definition either minimized the number of grievances or had no impact on the number of grievances.

TABLE 18

IMPACT OF GRIEVANCE DEFINITION



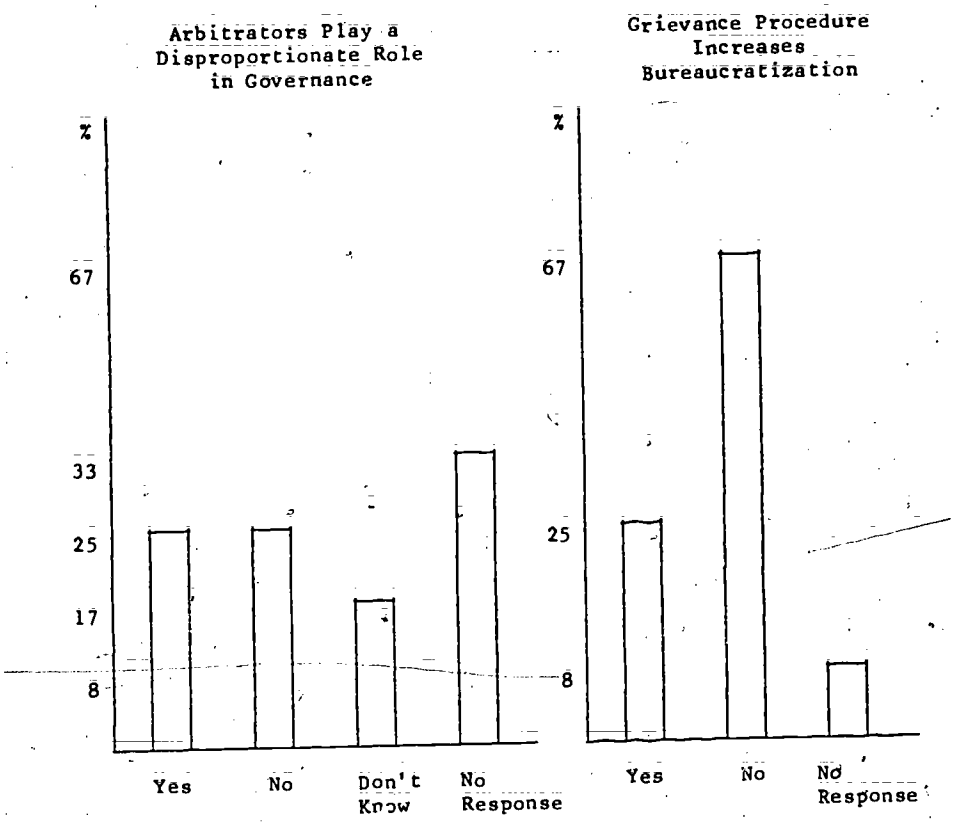
GRIEVANCE PROCEDURE: IMPACT ON COLLEGE GOVERNANCE (Table 19)

The respondents indicated little consensus concerning the arbitrator's role in governance. Three colleges (25%) responded that arbitrators played a disproportionate role in governance. An equal number responded "no" to the same question. The remaining six institutions (50%) indicated that they did not know or did not respond to the question.

One common hypothesis is that the grievance procedure increases bureaucratization. Nine (67%) of the respondents did not support this hypothesis. Three respondents (25%) agreed that the grievance procedure did increase the level of bureaucratization.

TABLE 19

GRIEVANCE PROCEDURE: IMPACT ON COLLEGE GOVERNANCE

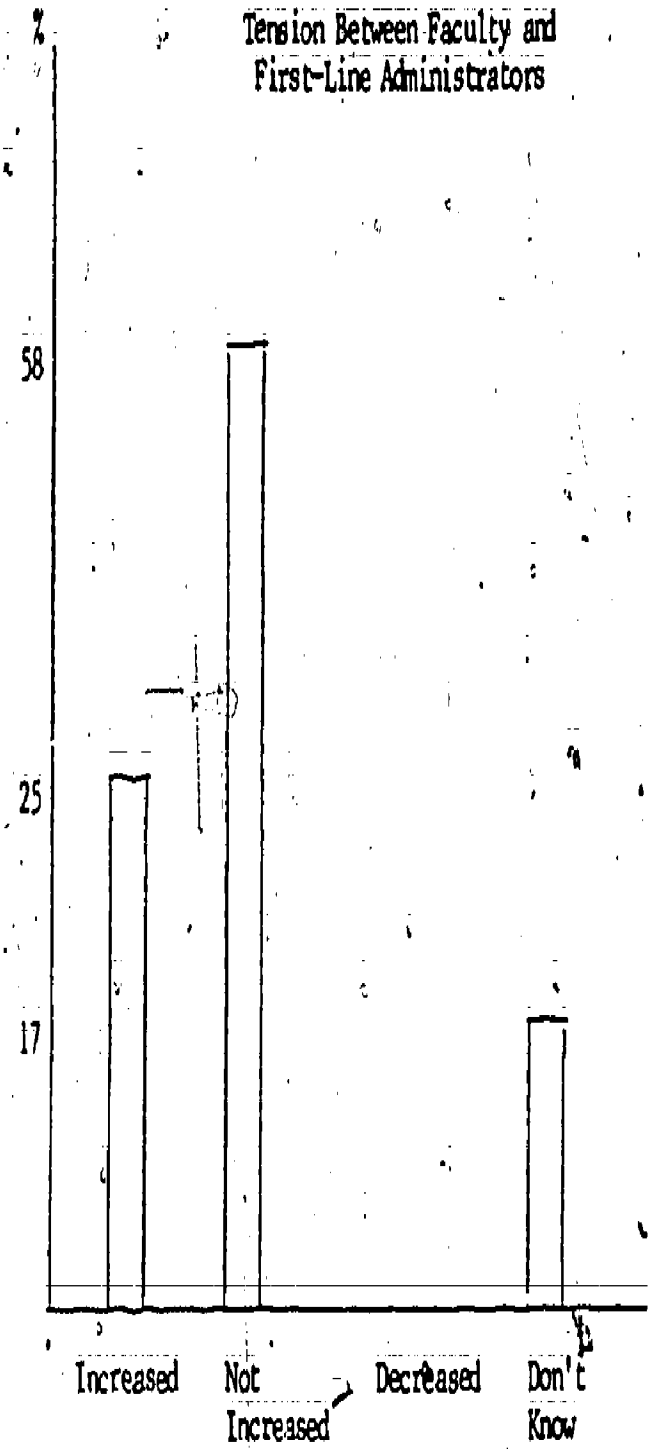


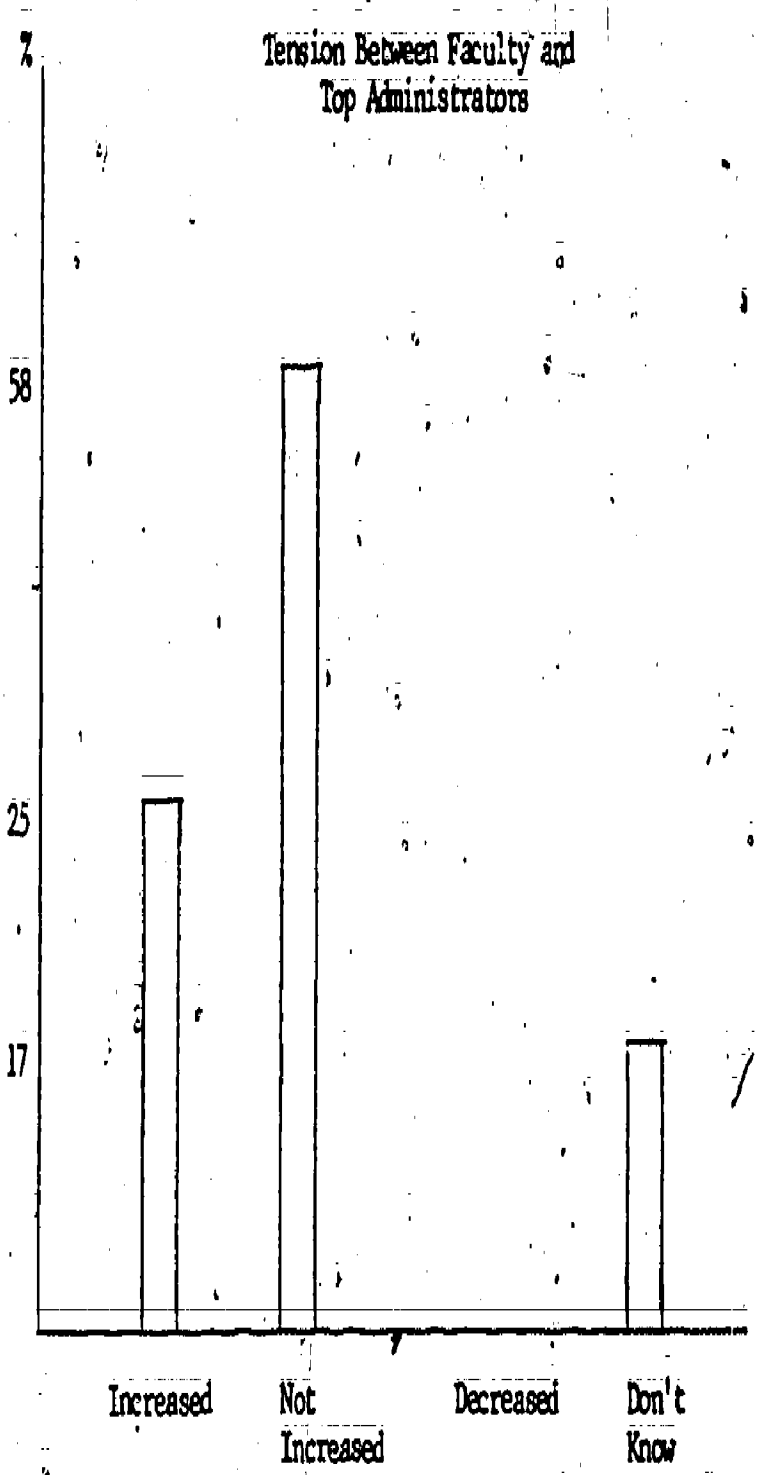
IMPACT ON INSTITUTIONAL RELATIONSHIPS (Table 20)

It is commonly assumed that a formal grievance procedure will be adversarial and increase the tension between faculty and administrators. Most respondents (58%) indicated that their grievance procedures did not increase the tension between faculty and first-line administrators nor between faculty and top administrators. A minority (25%) did indicate that tension was increased between faculty and administrators at both levels. No respondent indicated that the grievance procedure decreased tension between faculty and either level of administration.

TABLE 20

GRIEVANCE PROCEDURE: IMPACT ON INSTITUTIONAL RELATIONSHIPS





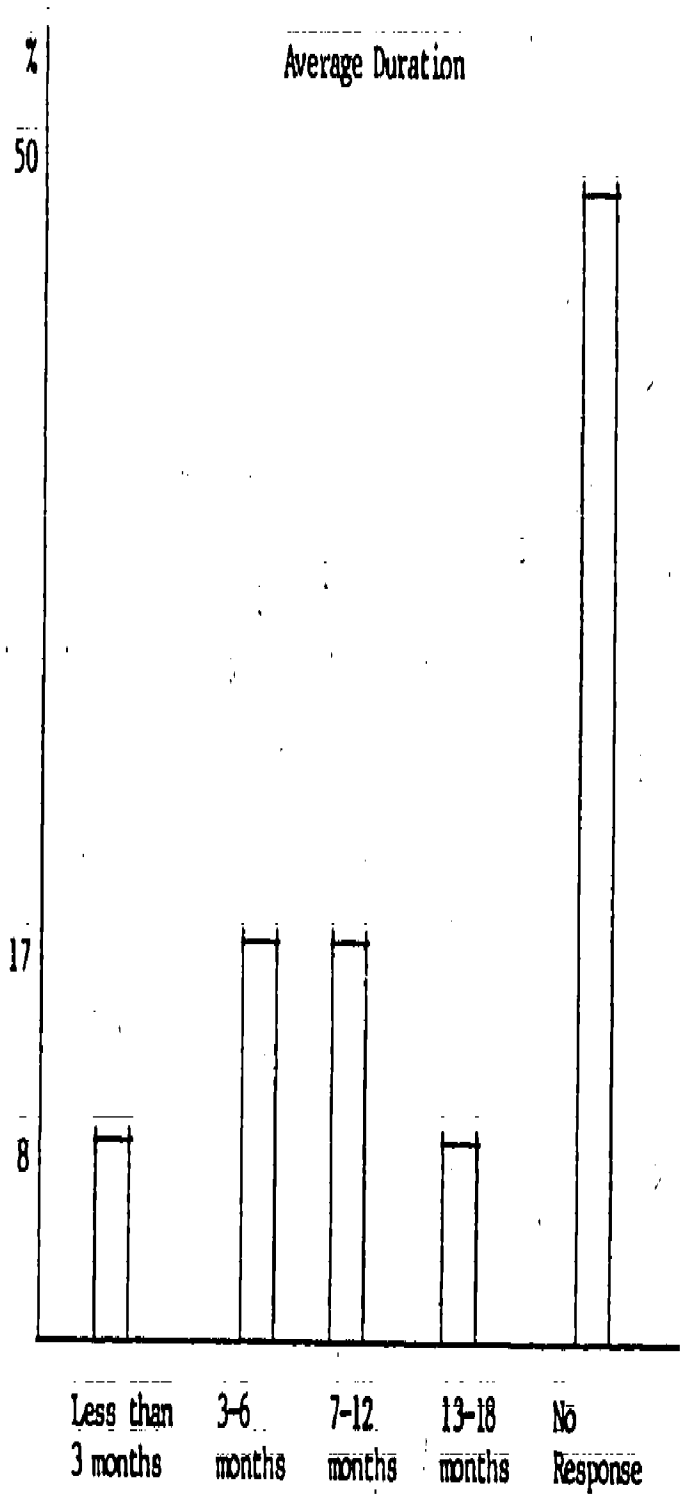
TIME EXPENDED ON GRIEVANCE PROCESS (Table 21)

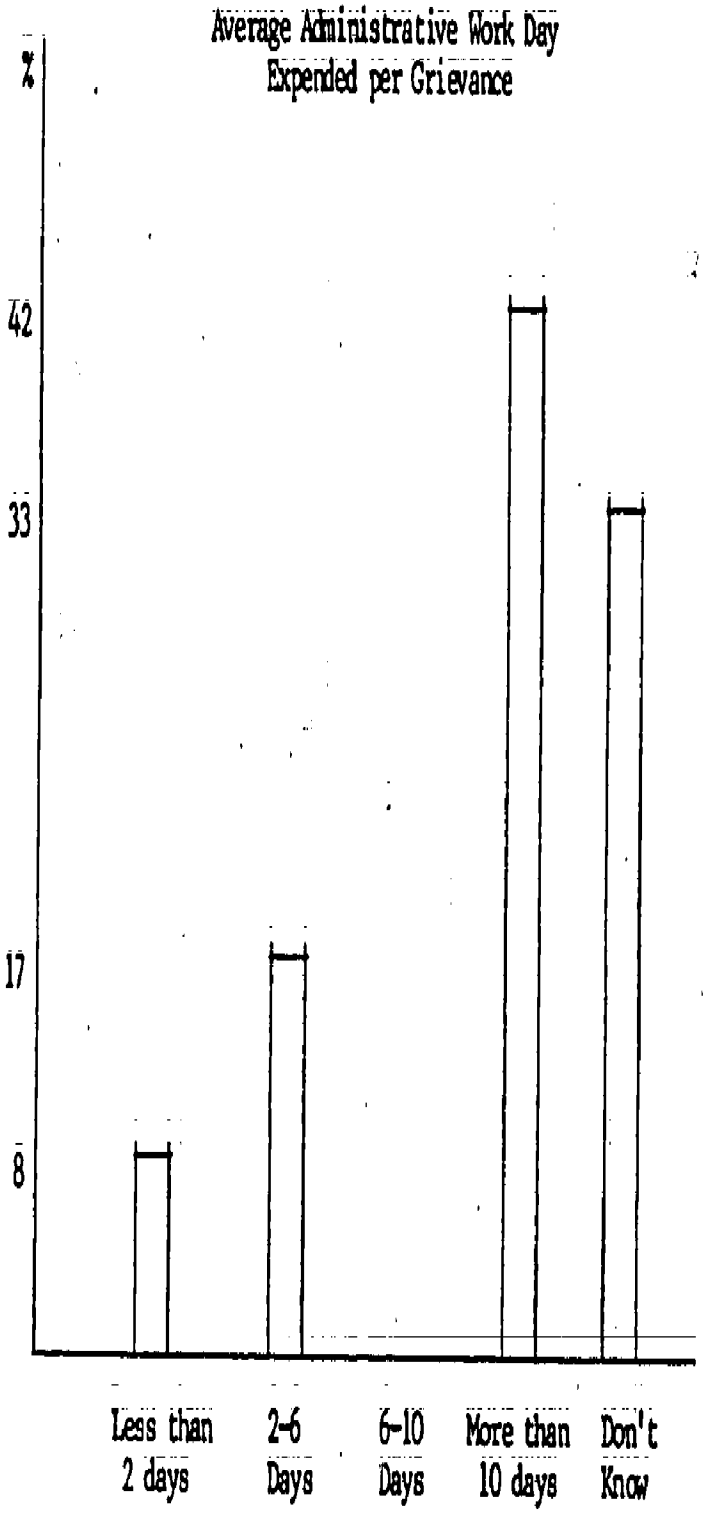
The grievance process was originated to allow quick resolution of contractual disputes. This is not often the case. Only one college (8%) indicated that grievances were resolved in less than three months. The remainder of the respondents reported longer duration with one college (8%) responding that the time needed for resolution exceeded 12 months. Unfortunately, six (50%) of the colleges did not respond to this item.

It has become clear over the years that grievances require much administrative time for preparation and hearings. Five colleges (42%) indicated that the administrative workdays concerned with grievances amounted to 10 or more days. This cost did not appear to be included in college estimates of cost reported on other tables. Four colleges (33%) did not respond to this question.

TABLE 21

TIME EXPENDED ON GRIEVANCE PROCESS





ARBITRATION COSTS (Table 22)

While very few grievances reach the arbitration stage, many community college representatives are concerned with the costs of arbitration. Table 22 highlights costs for attorneys' fees and arbitrators' fees borne by the Illinois community colleges. Attorneys' fees range from a low of $150 per grievance to a high of $2,000. Arbitrators' daily fees range from $200 to $500, with the average in excess of $300. Total arbitration costs range from $3,000 to $5,000 per arbitration. If the full indirect costs (administrators' time, etc.) were computed and added to this cost, the cost per arbitration to the community college is rather substantial. Similar costs are borne by the unions. These costs probably encourage compromise prior to the arbitration stage.

TABLE 22

ARBITRATION COSTS

College	Attorney Fee Per Grievance	Arbitrator's Daily Fee	Total Arbitration Cost
No. 1	$500-$1,000	$200	$3,000
No. 2	No Response	$301-$500	$3,000
No. 3	$1,001-$2,000	$301-$500	$3,001-$5,000
No. 4	$150	N/A	N/A
No. 5	$500-$1,000	$201-$300	$3,000
No. 6	N/A	$301-$500	$3,001-$5,000

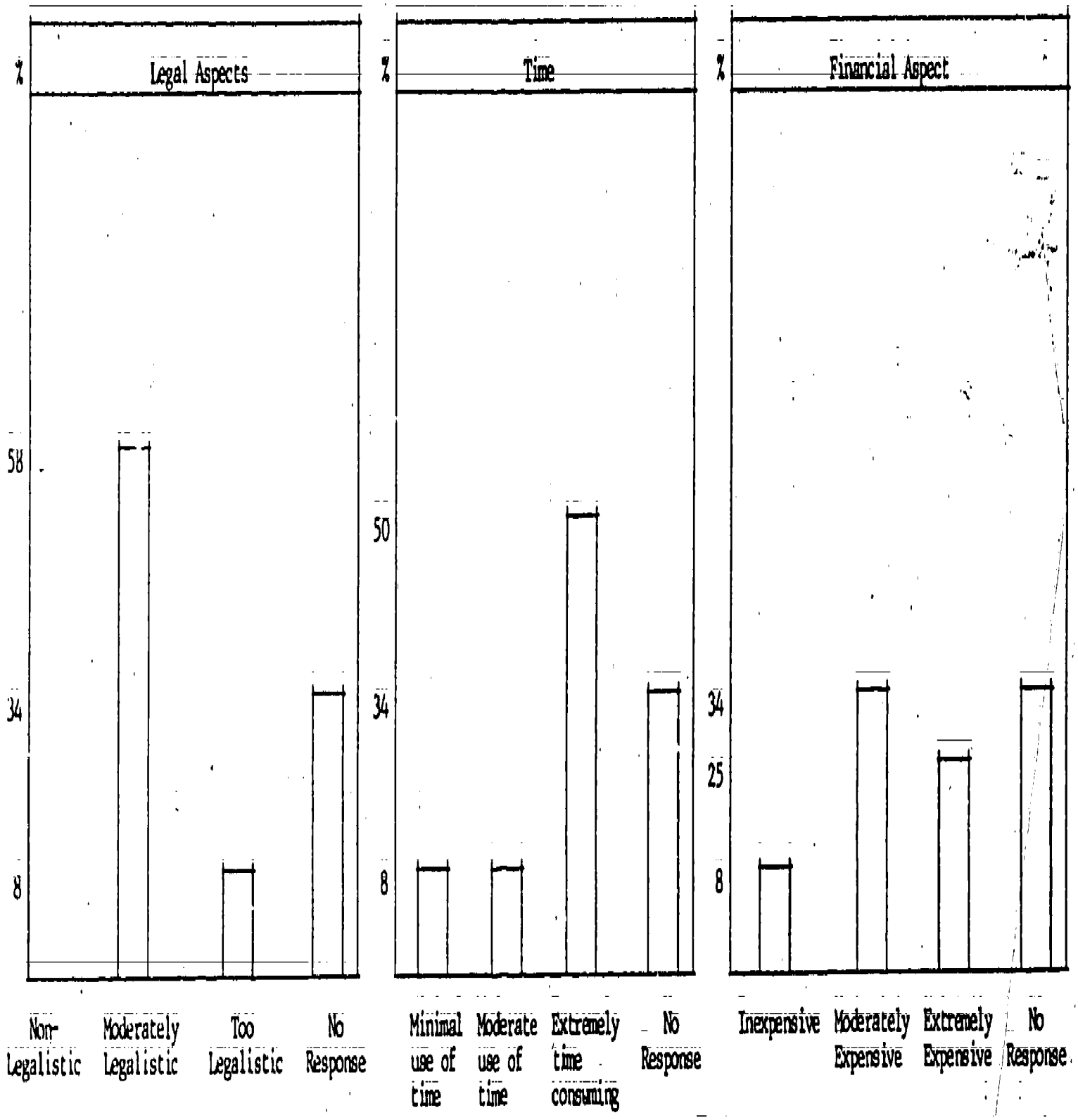
PERCEPTIONS OF ARBITRATION PROCESS (Table 23)

This table contains data regarding the perceptions of community college administrators about the arbitration process. The administrators were questioned about the legal, time and financial dimensions of arbitration.

Most of the respondents (58%) viewed arbitration as a moderately legalistic process. Fifty percent of the administrators viewed the arbitration process as extremely time consuming and 34% indicated that the process was moderately expensive. However, 25% responded that the arbitration process was extremely expensive. In summary, community college administrators appeared most concerned with the amount of time and money associated with arbitration and they were only moderately concerned with the legalistic nature of the process.

TABLE 23

PERCEPTIONS OF ARBITRATION PROCESS

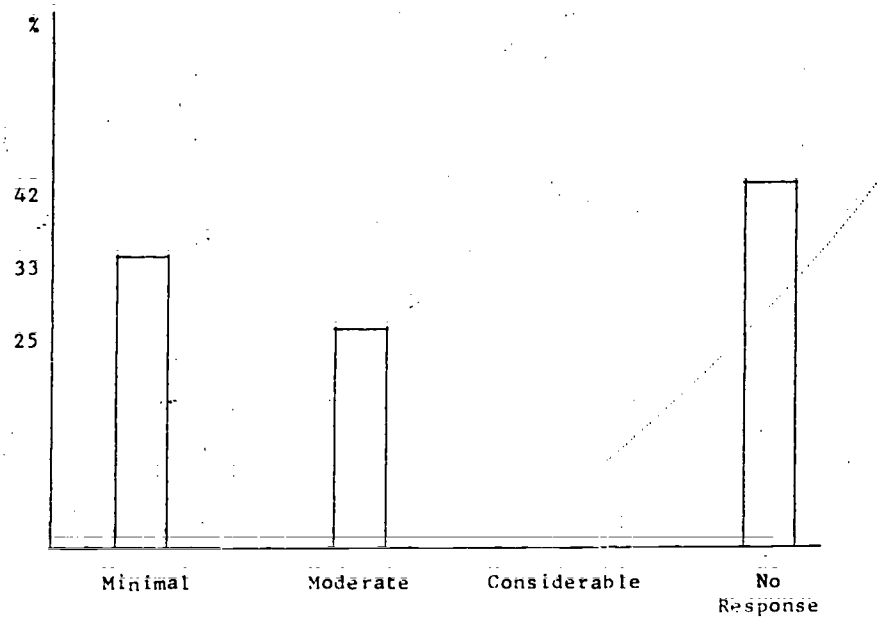


PERCEPTIONS ABOUT ARBITRATORS' KNOWLEDGE OF COMMUNITY COLLEGE ORGANIZATION AND GOVERNANCE (Table 24)

Few arbitrators have administrative experience in community colleges. Consequently, community college arbitration cases are usually heard and decided by arbitrators with primary experience in the private sector. The respondents indicated that the arbitrators utilized in Illinois had minimal (33%) or moderate (25%) knowledge of community college organization and governance.

TABLE 24

PERCEPTIONS ABOUT ARBITRATORS' KNOWLEDGE OF COMMUNITY COLLEGE ORGANIZATION AND GOVERNANCE



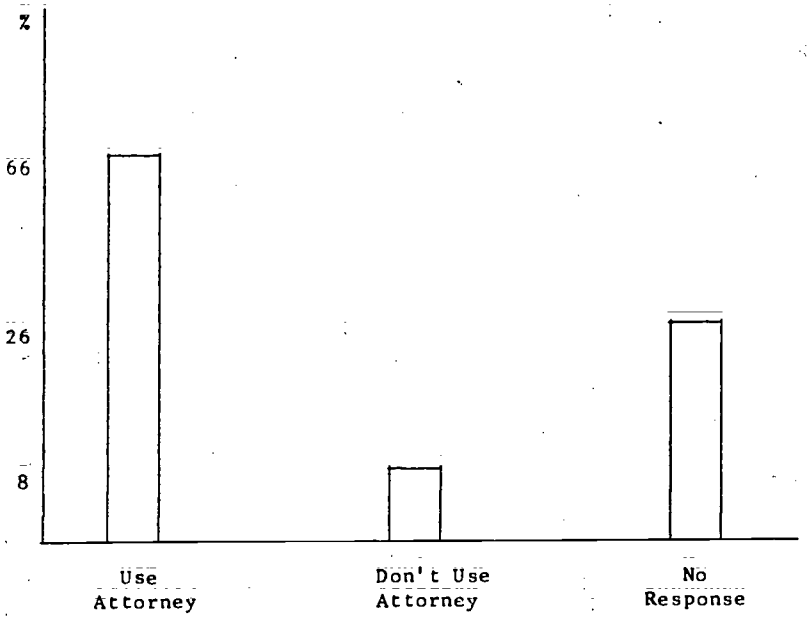
ATTORNEY INVOLVEMENT: GRIEVANCE-ARBITRATION PROCESS (Table 25)

Eight colleges (66%) utilized attorneys when grievances were filed. Six of these colleges engaged an attorney at the first step. One college waited until it was necessary to prepare for arbitration before involving an attorney. Only one college reported that it did not use an attorney in the arbitration process. Three colleges did not respond to this question. One college, which did not respond, employs an administrator who is an attorney.

TABLE 25

ATTORNEY INVOLVEMENT IN GRIEVANCE

ARBITRATION PROCESS

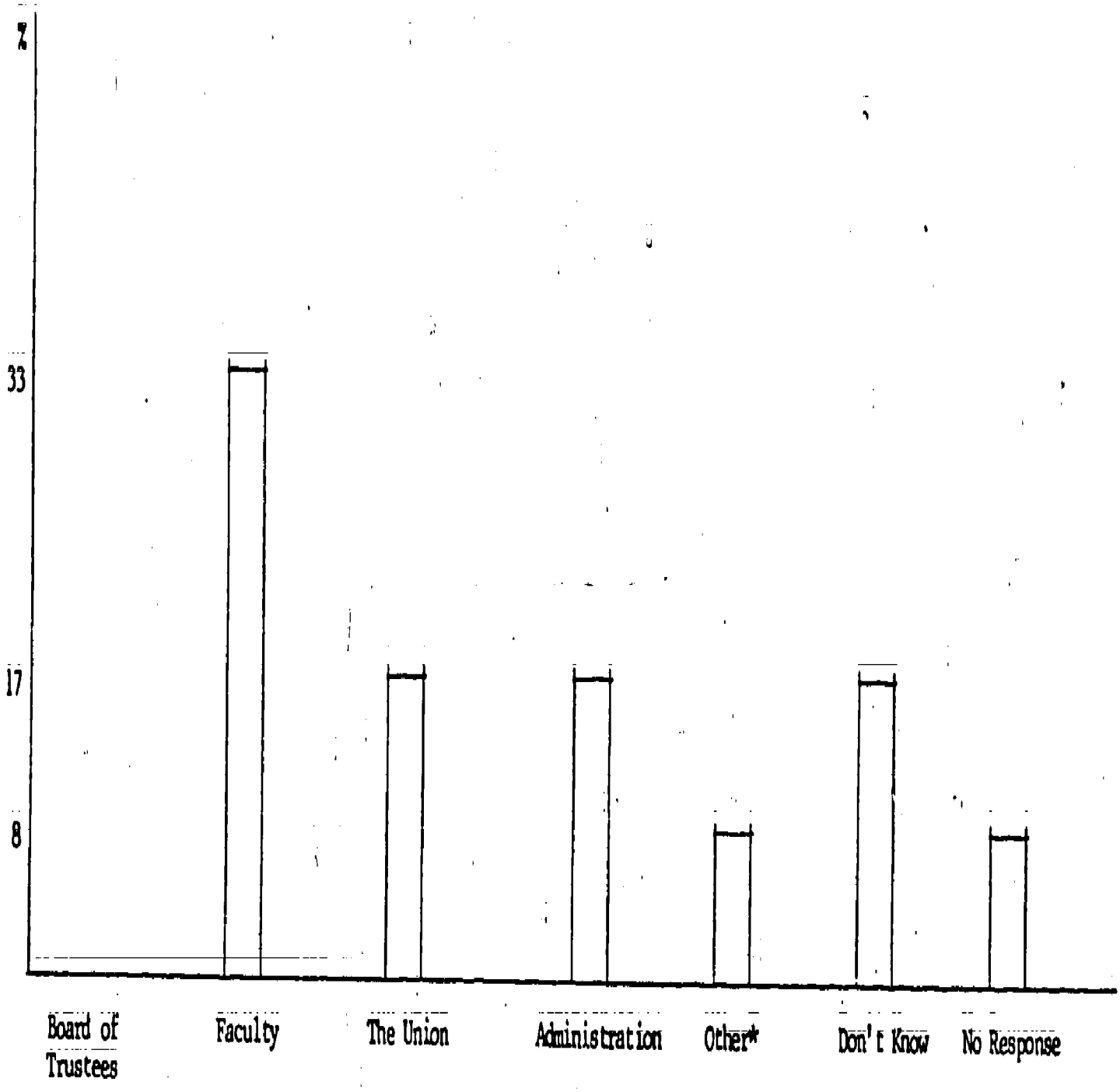


PERCEPTIONS OF GRIEVANCE-ARBITRATION BENEFICIARIES (Table 26)

Opinions regarding the beneficiaries of the grievance-arbitration process varied considerably. Four (33%) of the administrators indicated that the faculty benefited most from the process. Two (17%) of the respondents selected the union as the primary beneficiary while the same percentage chose the administration. No respondent selected the board of trustees as the beneficiary. It must be assumed that when the administration wins the board of trustees also wins.

TABLE 26

PERCEPTIONS OF GRIEVANCE-ARBITRATION BENEFICIARIES



*One respondent stated that all parties benefit.

ARBITRATION OUTCOMES (Table 27)

This table indicates that, for the few arbitration cases reported, the college tended to "win" more cases than the union. However, four of the colleges reporting arbitration cases indicated either a split decision or an equal number of "wins" by the college and the union.

Arbitration experience may influence the number and types of grievances advancing to this final step. Unions with a mixed record of success may be reluctant to opt for arbitration and attempt to reach a compromise instead. The same is true of college administrators.

TABLE 27

ARBITRATION OUTCOMES

College	College Wins %	Union Wins %	Split Decision %
No. 1	60	40	
No. 2	100		
No. 3	50	50	
No. 4	50	50	
No. 5	50	50	
No. 6			100

ARBITRATION AND THE COURTS

In the private sector, the courts are very reluctant to overrule an arbitration decision. This is not the case in the public sector. Arbitrators unaware of education law frequently infringe upon the non-delegable powers of governing boards. At times they have no choice because they must interpret a flawed and/or illegal article in a poorly written contract. One college in this survey appealed the arbitrator's decision 10 times. Nine appeals were based on the question of arbitrability and the fact that the arbitrator ignored the non-delegability concept. One challenge was based on the arbitrator exceeding his authority. Unlike the private sector tradition, this college was successful seven times in its judicial appeals. Management can successfully challenge unfavorable arbitrator decisions when the arbitrator infringes on the board's non-delegable rights. This record not only confirms that arbitrators don't always know educational law, but raised a fundamental question about the efficacy of binding arbitration which is not binding.

The respondents also reported union challenges to arbitrator decisions. One challenge was based on the arbitrator exceeding his authority and another was based on an error in judgment. The union lost both appeals. One other appeal is still pending. The basis for challenge was not reported on this undecided appeal.

In addition to thirty-one specific questions asked on the survey instrument, two open-ended questions were also included. Six administrators responded to these questions. Most of the comments centered on two issues: (1) the grievance process and (2) the arbitration process.

The grievance process was described as "necessary and vital to contract administration if restricted to the terms of the contract." Respondents also acknowledged that the process provided time to "cool off" and ". . . focused attention on language which needs to be clarified."

Some problems associated with the arbitration process were identified by survey respondents: (1) ambiguous contract language was perceived as more apt to be altered by arbitration rather than negotiation since teacher unions appear reluctant to change contract language; (2) major problems sometimes occur with arbitrators because they do not understand the community college environment; (3) the authority of arbitrators in the public sector is not well defined, and therefore, they sometimes overstep their authority.

SUMMARY

The respondents provided much helpful data and insight into the research questions addressed by this portion of the study. Grievances were infrequent except as reported by one or two institutions. The number of grievances has declined rapidly over the past three years. Most grievances were settled or withdrawn prior to the terminal step. The large number of arbitration awards appealed to the courts was alarming given concern about the viability of the arbitration process. Arbitrators apparently were unaware of, or ignored, the non-delegable powers of trustees. Since they must interpret the contract, a poorly written contract may force them to make flawed awards. The judicial appeal process increased the cost and time required to reach resolution. Unlike private sector cases, the courts did not hesitate to overrule the arbitrator. The court ruled in favor of management seventy percent of the time.

Teaching assignments, appointments, extra duty responsibilities and other "bread and butter" issues were the most frequently grieved and arbitrated. Problems encountered and reported in this monograph included: (1) arbitrators with little knowledge of college governance, (2) the time and expense involved, and (3) the need to appeal arbitration awards to the courts.

Three trends appear to be emerging in faculty grievance administration. First, there appears to be a declining number of grievances. Second, very few grievances are taken to arbitration. Third, management has been extremely successful in getting the courts to overrule arbitration awards when non-delegable powers are involved. While problems were readily recognized, the administrators responding supported the need for a grievance procedure. The future requires management and unions to negotiate improved grievance procedures.

CHAPTER IV

FUTURE DIRECTIONS

It has become increasingly clear that grievance arbitration in both the private and public sectors has not fulfilled the objectives of its early advocates who preferred arbitration to litigation.

> Arbitration claims among its advantages the expertise of a specialized tribunal and the saving of time, expense and trouble . . . the costly, prolonged and technical procedures of courts are not well adapted to the peculiar needs of labor management relations.[21]

Central to this faith in arbitration was the assumption that arbitrators were more knowledgeable about labor relations than judges. Justice Douglas authored one of the most famous statements about the preference of arbitrators over judges.

> The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed.[22]

Critics of the grievance arbitration process have noted that these objectives are seldom achieved and that special expertise of arbitrators is very exaggerated. This study confirmed the opinion of the critics. Nevertheless, respondents supported the grievance process. Administrators apparently recognized that all major stakeholders benefit from the process and that the impact on college governance has been minimal. In addition, the process has not overly exacerbated the tension between faculty and college administrators. On the other hand, this study uncovered many potential problems with existing grievance procedures.

IMPLICATIONS

Five key implications emerged from this study and the authors' views of the status of Community College Labor Relations:

1. Most colleges need to revise their grievance arbitration procedures.

2. Colleges that are not currently bargaining need to begin preparing for bargaining now. When a bargaining law is passed, it will, in all likelihood, contain a provision mandating the binding arbitration of grievances. These colleges should negotiate their grievance arbitration clause with great care.

3. A strategy to increase the number of arbitrators knowledgeable of community college governance should be developed and implemented.

4. Colleges could benefit from a formal network developed to share labor relations information and sponsor training programs, e.g., "Handling Grievances."

5. Additional studies of grievance arbitration need to be conducted. The unions' views of the process should be explored. Also, individual arbitration awards should be analyzed to determine significant aspects of arbitrators' decisions.

The grievance procedures developed by Illinois community colleges are noted for their diversity. Those colleges with a long union history have a "storehouse" of knowledge that should be shared with the 19 colleges without contracts. As educators, we believe that one college can learn from the experience of others. This monograph is a start in this direction--but cannot replace the personal contact that should take place in the formal network recommended above.

ENDNOTES

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2. Maurice S. Trotta, Handling Grievances: A Guide for Management and Labor, Bureau of National Affairs, Washington, D.C., 1976, p. 27.

3. "Basic Patterns: Grievances and Arbitration," in Collective Negotiations and Contracts, Washington, D.C.: The Bureau of National Affairs, 1979, p. 51.

4. David W. Leslie and Ronald P. Satryb, "Writing Grievance Procedures on the Basis of Principle," in George W. Angell, et al., Handbook of Faculty Bargaining, Jossey-Bass, Washington, 1977, p. 189.

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6. Robert Coulson, Labor Arbitration--What You Need to Know, American Arbitration Association, New York, 1976, pp. 17-18.

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9. Robert Birnbaum, Creative Academic Bargaining: Managing Conflict in the Unionized College and University, Teachers College Press, New York, 1980, p. 164.

10. Leslie and Satryb, p. 189.

11. Arnold Zack, "Understanding Grievance Arbitration in the Public Sector," Grievance Handling and Preparing for Arbitration in the Public Sector, Institute of Industrial Relations, UCLA, Los Angeles, 1976, p. 12.

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